

Remarks/Arguments:

Claims 1, 3-6, 22, 24-26, and 33 are pending in this Application. Claims 22, 24-26 and 33 have been allowed.

Claim Rejection – 35 U.S.C. § 112

The Examiner has repeated her rejection of claims 1 and 3-6 under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement. Applicant respectfully request reconsideration of the rejection.

The Examiner notes that the rejected claims are directed to polynucleotides having 95% identity to polynucleotides of SEQ ID NO: 1 or SEQ ID NO: 5 or to polynucleotides encoding polypeptides of SEQ ID NO: 2 or SEQ ID NO: 6 or to a cDNA deposited with the ATCC wherein the sequences encode a particular receptor (leukotriene) having particular characteristics (activated by leukotriene C4 or D4). However, the Examiner maintains her previous rejection stating that the sequences of SEQ ID NO: 1, 2, 5 and 6, are not representative of the claimed sequences because they represent full-length original sequences of 100% identity. As a basis for the rejection, the Examiner points to a failure of the specification to either: (1) identity a particular portion of the structure that must be conserved correlative to the recited functional limitation; or (2) examples of the claimed species as well as a representative number of species.

In a recent decision, the CAFC, in *In re Wallach*, 378 F.3d 1330, specifically addressed the question of the adequacy of representative number of species for written description. The court restated, with approval, the following section of the MPEP:

Description of a representative number of species does not require the description to be of such specificity that it would provide individual support for each species that the genus embraces. For example, in the molecular biology arts, if an applicant disclosed an amino acid sequence, it would be unnecessary to provide an explicit disclosure of nucleic acid sequences that encoded the amino acid sequence. Since the genetic code is widely known, a disclosure of an amino acid sequence would provide sufficient information such that one would accept that an applicant was in possession of the full genus of nucleic acids encoding a given amino acid sequence, but not necessarily any particular species.

In re Wallach, at 1334, quoting MPEP §2163.II.A.3.a.ii (8th ed.).

Applicant notes that, as filed, the Application describes the invention as covering the subject sequences as well as "homologues thereof." (specification, page 2, lines 15-19). The term "homologue" is described in the specification as covering "homology with respect to structure and/or function providing the resultant nucleotide sequence codes for or is capable of coding for a

polypeptide having activity as a PFI-017 GPCR" (i.e., activated by leukotriene C4 or D4) (specification, page 15, lines 7-10). Homology is further described according to preferred sequence homology: "at least 70%... more preferably *at least 95% homology* to a nucleotide sequence coding for the amino acid sequence shown in SEQ ID NO: 2 or 6" and "at least 70%... more preferably *at least 95% homology* to the nucleotide sequence shown in SEQ ID NO: 1 or 5." (*emphasis added*, specification page 15, lines 10-18).

Applicant submits that one skilled in the art could, in light of the description provided in the specification, envision all possible variations encompassed within the claims, for example, based upon knowledge of degeneracy of the genetic code. (see, specification, page 15, lines 21-25). All such variations would encode the same protein, a leukotriene receptor, having the same functional characteristics of being activated by leukotriene C4 or D4.

For the foregoing reasons, Applicant respectfully requests reconsideration of the rejection under 35 U.S.C. § 112, first paragraph.

Claim Objection

The Examiner has objected to the form of claim 5 as being in improper multiple dependent form. Applicant has amended claim 5 so as to incorporate the referenced language of claim 4 relating to host cells. Applicant submits that newly amended claim 5 has the identical scope as the previously presented claim 5, since all limitations of the prior claim have been incorporated in the amended claim and no new limitations have been added.

Applicant believes that the amendments to claim 5 place the Application in condition for immediate allowance. Accordingly, Applicant respectfully requests entry of the Amendments presented herewith, reconsideration of the Office Action mailed June 14, 2004 and issuance of a timely Notice of Allowance.

Respectfully submitted,

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Pfizer Inc.
Patent Department, MS 8260-1611
Eastern Point Road
Groton, Connecticut 06340
(860) 715-0041



Gabriel L. Kleiman
Attorney for Applicant(s)
Reg. No. 40,681